

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7788 OF 2005**

Union of India
Service through Chief Secretary,
Government of India,
Post & Telegraph Dept.,
New Delhi.

...Appellants.
(Orig.Defts.)

V/s.

1.Jethalal Ladhuram Maniar
2.Ravindra Jethalal Maniar
3.Prakash Jethalal Maniar

All of Bombay Indian Inhabitants,
carrying on business in the name & Style

of M/s. Yashaswi Builders,
Nathalal Bhavan, 133, Vithabhai Patel Road, ..Respondents
Mumbai 400 004. (Orig.Resps.)

Shri S.R.Radium with Shri S.S.Sharer, advs. for the Appellants.
Shri R.A.Throat with Shri P.J.Throat and Devendra Udani,
advs. for the Respondents.

**CORAM: V.C.Daga, J.
DATE : 1st December, 2005.**

ORAL JUDGMENT: (Per V.C.Daga, J)

1. Heard the learned counsels for the rival parties.
Perused Petition and annexures annexed thereto.

FACTS

2. This Petition is filed under article 227 of the Constitution of India against the judgment and order dated 12th April, 2005 passed by the Division Bench of Small Causes Court in Appeal No.552 of 2001; confirming the judgment and decree to the extent it directs delivery of possession of the suit property and to that extent confirmed the judgment and order passed by the learned Trial Judge on 22nd/23rd June, 2001 in R.A.E. Suit

No.929/2990/1987.

3. The present Respondents/landlords, after purchasing the suit property, by registered sale deed dated 3/11/82, from the previous landlord Mr. Natwarlal Dwarkadas Shroff and others did issue notice dated 2nd August, 1984 calling upon the Union of India and the Post Office, Churney Road, Mumbai to pay arrears of the rent at the rate of Rs.115.45 from 03/11/1982 onwards with permitted increase as per Section 12(2) of the Bombay Rent Act (57 of 47) within 30 days from the date of receipt of the notice in view of purchase of the suit property by them. At this juncture, it is relevant to mention that demand for permitted increases was made without specifying any specific quantified amount. What was demanded was the amount as may be payable under section 12(2) of the Rent Act.

4. After receipt of the notice of demand, Petitioner/Tenant did not make any application under section 11 of the Rent Act for getting the standard rent fixed. It will not be out of place to mention that so far as the amount of monthly rent in the sum of Rs.115.45 paise is concerned, the same was never in dispute. Even today no dispute is being raised with respect to the demand on this count. Since there was no compliance of the notice dated 2nd August, 1984, the Respondent/Landlord proceeded to file suit R.A.E.Suit No.929/2990/87 in the Small Causes Court at Mumbai.

5. On being summoned, the Petitioners/Defendants (Tenant) appeared and filed their Written Statements. No dispute was raised with respect to the admitted amount of monthly rent. However, the dispute was sought to be raised in the Written Statement relating to the issue as to whether or not Petitioners/Defendants were liable to pay the permitted increases pursuant to section 12(2) of the Rent Act. The contention raised in the Written Statement was that since the demand notice included the demand with respect to permitted increases under section 12(2) of the Rent Act as such, notice of demand was invalid as such the suit based on such notice was not tenable.

6. The Trial Court was pleased to frame issues relevant to the pleadings of the rival parties. The suit was tried by the Trial Court.

7. The Trial Court was pleased to decree the suit vide its judgment and order dated 23.6.2001 holding that the Petitioners/Defendants were not willing to pay arrears of rent and did not pay arrears of rent inspite of the notice of demand dated 2/8/94. The Trial Court also held that the Petitioners were exempted from payment of permitted increases under section 12(2) of the Act to the extent the suit claim was rejected. In the result, Trial Court was pleased to decree the claim for possession.

8. Being aggrieved by the aforesaid judgment and order of the Trial Court dated 23/6/2001, an appeal was carried to the Division Bench of the Small Causes Court. The Division Bench was pleased to confirm the judgment and decree of the Trial Court holding that the Petitioner/Defendants/Appellants did not pay the rent in spite of specific demand vide demand notice dated 2nd August, 1984 as such liable to be evicted from the suit premises.

9. Aforesaid judgment of the lower Appellate Court is a subject matter of challenge in this Petition filed under Article 227 of the Constitution of India.

RIVAL SUBMISSIONS

10. The learned counsel appearing for the Petitioners contends that the notice dated 2nd August, 1984 is bad and illegal since it contained demand for permitted increases under section 12(2) of the Rent Act. He contends that so far as the Petitioner is concerned, they are exempted from the payment of permitted increases under section 12(2) of the Rent Act and as such, demand set up in this above demand of notice is bad in law. He further contends that the suit could not have been framed and based on such

defective notice and the suit could not have been decreed

by the Court. Such a decree could not have been affirmed by the Lower Appellate Court.

11. Learned counsel for Respondent tried to support the impugned judgment and order of the Courts below.

CONSIDERATION

12. Having heard the rival Parties, it is not in dispute that the rent of the premises was Rs.115.45 paise. It is also not in dispute that from the date of purchase of the suit property, Respondents/landlords were entitled to receive monthly rent from November, 1982 onwards. It is also not in dispute that till service of the notice dated 2nd August, 1984, no amount of arrears of rent were paid by the Petitioner to the Respondent-landlord. In that view of the matter, Petitioners were well within the mischief of the section 12(3)(a) of the Bombay Rent Act.

13. So far as the challenge set up on the score of the Section 12(2) of the Rent Act is concerned, notice invites attention of the Petitioner that they are bound to comply with the provisions of Section 12(2) of the Bombay Rent Act. The demand did not specify any amount. It is, thus, clear that what was demanded was the compliance of section

12(2) of the Rent Act. If the Section 12(2) was not applicable, then it was open for the Petitioner to ignore

the demand made on this score with liberty to inform the landlords that they were not liable to pay permitted increases for the stated reasons. However, at any rate, they were liable to pay arrears of agreed rent. By no stretch of imagination, notice dated 2nd August, 1984 could be said to be bad in law only because it had called upon the notice to comply with the provision of Section 12(2) of the Bombay Rent Act.

14. Assuming for the sake of arguments that the part of the notice was not in accordance with the provisions of the Bombay Rent Act, in that event, it was open for the tenant to ignore that part of the demand; which was not in conformity with the provision of Section 12(2) of the Rent Act. It was open for the Petitioners to remit the amount of arrears of agreed rent. That was also not done. Law in this behalf has been clearly been laid down by this Court in **Lalji Lachhamandas v. Amiruddin Amanulla and another** **Maharashtra Law Journal 237**. This Court in **Lalji Lachhamandas** case (supra) has said as under:

15. Coming then to the argument of Mrs. Agarwal about the validity of the notice, it is seen that both the lower Courts have committed an error in

deciding the issue of standard rent in the absence of a standard rent application filed by tenant under section 11 of the Act. No dispute about standard rent is permissible to be raised in a suit if the tenant has not made any application under section 11 of the Act. The finding of fixation of standard rent was thus uncalled for and was without jurisdiction. Even assuming that the standard rent is Rs.12/- the notice making demand at the rate of Rs.13.56 ps. cannot be said to be bad in law. The respondent had an option to pay the undisputed amount of rent i.e. at the rate of Rs.12/- per month and raise dispute as regards the rest of the claim as made by the landlord, which he has not done so, and instead he has raised the dispute in the reply to the notice. As held by the Division Bench in Chhaganlal vs. Narayan Jagannath, any mistake in making demand for short amount would not render the notice invalid. Same view is reiterated by another Division Bench in Purushottam Bhanudas Palse vs. Shakuntalabai Vishwanath Ayyaswami, Writ Petition No.3650 of 1981. Therefore, the contention about validity of notice must be rejected.

Another judgment in the case of **Ramdas Vithal Chauhan (Supra) v. Pushpavati Mansukhlal Shah and another 2002(1) Maharashtra Law Journal 724**, this Court has held as under:-

(a) Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), SS. 12(3)(a), 11(3)- Suit for eviction on ground of arrears of permitted increases in rent - While applying provision of section 12(3)(a) read with Explanation-I, the tenant can only be said to be ready and willing to pay such amount if before the expiry of the period of one month after notice referred to in subsection (2), he makes an application under section 11(3) to the Court disputing standard rent and permitted increases and thereafter pays amount - Failure on part of tenant to make application under section 11(3) within one month of service of notice terminating tenancy - No protection of section 12(3)(a) of the Act.

15. Having examined the impugned judgment and order on the backdrop of the Law laid down by this Court, one has to reach to the conclusion that view taken by the Appellate Court is reasonable, possible and legal. Impugned judgment and order cannot be said to be perverse. In the case of Ramdas Vithal (Supra) this Court laid down the contours of Writ jurisdiction, following the jurisdiction of the Apex Court in paragraph 21 of the said judgment, in the following words:

The submission made by the learned counsel for the

respondent landlady that the concurrent findings of fact should not be disturbed deserves acceptance in view of the law laid down by the Supreme Court in Babhutmal Raichand Oswal vs. Laxmibai R. Tarte AIR 1975 SC 1297, wherein the Apex Court in an appeal by special leave from the judgment of this Court observed as under:

"It is a litigation between landlord and tenant and as is usual with this type of litigation, it has been fought to a bitter end. Much of the agony to which the tenant has been subjected in this litigation would have been spared if only the High Court had kept itself within the limits of its supervisory jurisdiction and not ventured into fields impermissible to it under Articles 226 and 227 of the Constitution."

It is, thus, clear that the High Court while exercising jurisdiction under Article 227 cannot interfere with the findings of fact recorded by the subordinate Courts or Tribunal. Its function is limited to seeing that the subordinate Court or Tribunal functions within the limits of its authority. Considering the dicta of the Apex Court in this behalf, it is not possible to interfere with the judgment and decree passed by the Courts below.

16. This Court not being a Court of Appeal is not

expected to substitute its views. Thus, considering all the circumstances of the case, no case is made out to interfere with the impugned judgment. The Petition is, therefore, dismissed in limine with no order as to costs.

17. At this stage, the learned counsel for the Petitioners was asked as to whether Petitioners would like to seek time to vacate the suit premises. In reply, he submitted that in absence of written instructions, it would not be possible for him to make such prayer. However, considering the fact that Petitioners are running their postal business from the suit premises. It would be reasonable to direct the Respondents decree holder not to execute the decree for the period of two months from today.

18. Petition is, thus, dismissed in limine with no order as to costs.

(V.C.Daga, J.)